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D E C I S I O N
of 5 December 2000

Case Number: T 0287/98 - 3.3.6

Application Number: 94201912.6

Publication Number: 0636679

IPC: C10L 5/48

Language of the proceedings: EN

Title of invention:
Solid fuel from shredder waste

Applicant:
GALLOOMETAL, naamloze vennootschap

Opponent:
-

Headword:
Scrap metal/GALLOOMETAL N.V.

Relevant legal provisions:
EPC Art. 70(2), 14(2), 111(1)

Keyword:
"Amendment based upon original text in a language different
from language of procedure (accepted)"
"Remittal to the first instance (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 0287/98 - 3.3.6

D E C I S I O N
of the Technical Board of Appeal 3.3.6
of 5 December 2000

Appellant: GALLOOMETAL, naamloze vennootschap
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 24 November 1997
refusing European patent application
No. 94 201 912.6 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: P. Krasa
Members: L. Li Voti
C. Holtz

Summary of Facts and Submissions

- I. This appeal lies from the decision of the Examining Division to refuse European patent application No. 94 201 912.6, relating to a fuel, for lack of novelty in the light of three documents.
- II. With its statement of the grounds of appeal, the Appellant filed two amended sets of claims as, respectively, a main request (comprising seven claims) and an auxiliary request (comprising two claims).

Claim 1 of the main request reads as follows:

"1. Method for preparing a fuel from shredded waste comprising the removal of most of at least a number of the fine inert materials (3) including stone, glass and earth, characterised in that fuel is prepared from waste produced during the processing of scrap metal in a schredder and in that also at least the highly chlorous materials (4) are mostly eliminated from this waste."

- III. The Appellant submitted in essence
- that the term "shredder waste" in the context of the application has not the meaning of any waste that has been shredded and is not synonymous with "shredded waste". On the contrary, it relates to the waste fraction obtained by shredding scrap metal, which comprises ferrous metal scrap, such as damaged or used cars, domestic electrical apparatus and non-ferrous metal scrap such as computers and other electronic devices;

- that the application as originally filed was written in the Dutch language;
- that the term "scrap", which is found on page 1, line 32 of the English description is a translation of the word "schroot" from said Dutch text of the original application.

The Appellant argued

- that the English word "scrap" means refuse or waste in general, which is at variance with the meaning of the Dutch word "schroot" denoting "scrap metal", as substantiated by copies from the dictionaries "Van Daele" (page 2188), "Grote Nederlandse Larousse Encyclopedie" (page 360), "Peek's Standard Nederlands-Engels Technisch Woordenboek" (page 311) and "Kluwer's Universeel Technisch Woordenboek Nederlands-Engels" (page 550).

Thus "schroot" was not correctly translated into English and the word "scrap" in the application should therefore be amended to "scrap metal";

- that according to the amended claims the main constituent of the fuel was not shredded municipal waste or shredded garbage, but shredded waste obtained from the shredding of scrap metal wherein the highly chlorous materials had been mostly removed;
- that documents US-A-4 445 906 (D2), US-A-4 245 999 (D3) and US-A-4 341 353 (D4), cited in the decision, did not anticipate the claimed

subject-matter, since they only related to the treatment of municipal waste or garbage and not to the treatment of scrap metal;

- that the documents communicated by a third party by letter of 19 November 1997 and not taken into consideration in the decision of 24 November 1997 were not more relevant than the documents D2, D3 and D4.

IV. The Appellant requested that the decision of the Examining Division be set aside and (by implication) that a patent be granted, either on the basis of the main request or of the auxiliary request.

Reasons for the Decision

1. *Claim 1 of the Main Request - Amendments*
(Article 70(2)EPC)

Claim 1 of the main request differs from claim 1 as originally filed insofar as it relates to a method for preparing a fuel from shredded waste and not to a fuel from shredded waste as such and insofar as the fine inert materials are specified to include stone, glass and earth and further in that the so-called shredder waste is specified to be one produced during the processing of **scrap metal** in a shredder or hammer mill.

- From page 1, lines 31 to 33 and page 2, lines 8 to 20 and 27 to 29 of the application in suit as originally filed it can be derived that the fuel is obtained from a so-called shredder waste, produced during the processing of **scrap** in a

shredder or hammer mill, after at least part of the fine inert materials, which include stone, glass and earth, and the highly chlorous materials have been mostly eliminated.

In this respect the word "scrap" originally comprised in said passage of the English version of the application as filed, which means "refuse or waste in general" has been replaced in claim 1 by "scrap metal".

The original application in Dutch contained the word "schroot", which means **scrap metal**, as substantiated by the copies of various dictionaries provided by the Appellant. This word was thus not correctly translated into English and nothing other than "scrap metal" was meant in the application as originally filed.

Since Article 70(2) EPC provides that in a case referred to in Article 14(2) EPC, i.e. in which the European patent application is filed in a language of a contracting state other than English, French or German, the original text must be taken into account in proceedings before the European Patent Office, in order to determine whether the subject-matter of the application extends beyond the content of the application as filed, the replacement of the word "scrap" by "scrap metal" is allowable under Article 123(2) EPC.

2. *Remittal*

The decision under appeal was based upon a set of claims which is no longer requested by the Applicant and dealt exclusively with the novelty of such claims. Therefore, taking into account that there is now a new,

differently worded, set of claims which is intended to overcome the novelty objections based upon the documents cited in the decision, the Board considers it appropriate to exercise its discretion under Article 111(1) EPC to remit the case to the Examining Division for further prosecution on the basis of the claims of the main request.

In the course of the further examination, the Examining Division will have also to consider whether all the new claims of the main request comply with the requirements of Article 123(2) and 84 EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution on the basis of the seven claims of the main request.

The Registrar:

The Chairman:

G. Rauh

P. Krasa